IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Crim. Rev.Application No.408 of 2004

Shri Narayan Pandharinath
Ladkat ..Petitioner

vs.

1. State of Maharashtra
and another ..Respondents

Shri Uday Warunjikar for petitioner.
Shri U.V.Nikam, A.P.P. for respondent no.1.
Shri S.P.Kadam for respondent no.2

CORAM: A.M.KHANWILKAR J.
6th December,2005

P.C.

1. Heard counsel for the parties.

2. Rule. Rule made returnable forthwith by consent.

3. As short question is involved, hearing of the application is taken up forthwith by consent. Shri Nikam for respondent no.1 and Shri Kadam for respondent no.2 waive notice.

4. Respondent no.2 instituted the criminal action against the petitioner in relation to dishonour of cheque for offences punishable

under sec.138 of the Negotiable Instrument Act. The Trial Court on appreciation of evidence on record recorded finding of guilt against the petitioner and passed the following order:

> "1. Accused Shri Narayan Pandharinath Ladkat is hereby convicted vide provision of section 255(ii) of Cr.P.C. for the offences u/s 138 of N.I.Act and sentence to suffer S.I. for one year and also to pay compensation i.e. cheque amount of Rs.Five Lakhs to the complainant vide provision of section 357(iii) of Cr.P.C. and also to pay cost of proceedings Rs.2000/- (two thousands) to the complainant vide provision of section 359 of Cr.P.C. i/d to suffer further S.I. for 30 days.
>
> 2. Copy of this judgment be given to the accused on free of cost.
>
> Dictated and declared in open court."

The petitioner carried the matter in appeal. The Appellate Court affirmed the findings recorded by the trial court but partly allowed

the appeal by modifying the operative order of the trial court on following terms.

"(i) The appeal is partly allowed.

(ii) The impugned order of conviction for the offence u/s 138 of the Negotiable Instruments Act, compensation and costs is hereby confirmed.

(iii) The impugned order of sentence is modified as under:

(iv) For the offence u/s 138 of the Negotiable Instruments Act, the appellant/accused is hereby sentenced to suffer simple imprisonment for two weeks and to pay compensation of Rs.Five lacs to the complainant, in default to suffer simple imprisonment for six months.

(v) The appellant accused to surrender to his bail forthwith.

(v) Record and proceedings be sent back to the trial Court.

5. In so far as merit is concerned, both the courts below have analysed the evidence on record and have reached the finding of fact which is substantiated from the record. Counsel for the petitioner was not able to point out any infirmity in relation to the finding of fact so returned by the courts below. Both the courts below have rightly observed that the petitioner had failed to discharge his onus and the legal presumption stood unrebutted. On that finding the conclusion that the petitioner was guilty of offence under sec.138 of the Act was inescapable. In my opinion, there is no reason to interfere with the finding of fact so recorded by the two courts below nor with the approach adopted by them, in exercise of revisional jurisdiction.

6. The only question that requires to be considered in this revision application to answer the revision application partly in favour of the petitioner is the question as to whether it was open to Appellate Court to enhance the period of sentence in case of default committed by the petitioner in depositing the amount of compensation and/or cost, as the case may be. According to the petitioner, the trial court

sentenced the petitioner to suffer simple imprisonment for one year and to pay compensation in the sum of Rs.5,00,000/-. In addition, the Trial Court directed the petitioner to pay cost of the proceedings in the sum of Rs.2000/-. In default, to suffer further S.I. for 30 days. According to the petitioner, it is only on non payment of cost quantified by the trial court the question of undergoing simple imprisonment by way of default for a period of 30 days would arise. It is then contended that if this was the nature of the order passed by the Trial Court, Appellate Court on its own without giving show cause notice to the petitioner should not have increased the default period to suffer simple imprisonment for six months and that too in relation to non payment of compensation amount of Rs.5,00,000/- In my opinion, there is no substance in the grievance made by the petitioner that the direction to undergo S.I. for 30 days in default was only restricted to non payment of cost by the petitioner. It is not possible to interprete the operative order passed by the Trial Court in the manner in which the petitioner would like to contend. On the other hand, I find substance in the argument of

respondent no.2 that default provision made by the trial court would be applicable in relation to non payment of compensation amount of Rs.5,00,000/- as well.

7. Be that as it may, the petitioner may be justified in making the grievance to the limited extent that the Appellate Court on its own could not have enhanced the period of sentence in case of default from 30 days to six months as has been done in the present case. No prior show cause notice was given to the petitioner in that behalf. Atleast the record produced before me by the parties does not indicate that position. That, however, does not mean that the entire order of the Appellate Court will have to be nullified. Instead, in exercise of revisional jurisdiction, the order of the appellate court with regard to the direction relating to default in depositing the specified amount of compensation can be brought down to the term provided by the trial court namely to suffer S.I. for 30 days. This would meet the ends of justice and correct the error committed by the Appellate Court to the limited extent. Accordingly, this revision partly succeeds by modifying the operative order of the Appellate

Court in the following term.

"(i) The appeal is partly allowed.

(ii) The impugned order of conviction for the offence u/s 138 of the Negotiable Instruments Act, compensation and costs is hereby confirmed.

(iii) The impugned order of sentence is modified as under:

(iv) For the offence u/s 138 of the Negotiable Instruments Act, the appellant/accused is hereby sentenced to suffer simple imprisonment for two weeks and to pay compensation of Rs.5,00,000/- (Rupees Five lacs) to the complainant in default to suffer S.I. for 30 days."

(v) The appellant/accused to surrender to his bail forthwith.

(vi) Record and proceedings be sent back to the Trial Court."

Revision application is partly allowed on the

above terms.